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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 90

CARLOTA BENITEZ SAMPAYO,
Petitioner,

vs.

THE BANK OF NOVA SCOTIA,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR RESPONDENT

WALTER L. NEWSOM, JR.,
Attorney for Respondent.

J. HENRI BROWN,
Of Counsel.

April, 1941.

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SUBJECT INDEX

CITATIONS

Cases

STATUTES

Judicial Code

PAGE

The National Bankruptcy Act

Legislative Reports

Congressional Record

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Jurisdiction

The jurisdiction of this Court rests on Section 240(a) of the Judicial Code as amended by Act of February 13, 1925 (28 U. S. C. A. 347(a)) and Section 24(c) of the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. 47(c)).

Opinion Below

The opinion of the Circuit Court of Appeals for the First Circuit is reported in 109 F. (2d) 743, at pages 747-751, and is printed in the Record, pages 59-68. The Opinion, Findings of Fact and Conclusions of Law of the United

States District Court for Puerto Rico are not reported, but are printed in the Record, pages 17-25.

Statement

Carlota Benitez Sampayo, here Petitioner, filed her individual petition in the United States District Court for Puerto Rico, in Bankruptcy, as a farmer-debtor for composition or extension under Section 75 of the National Bankruptcy Act (11 U. S. C. 203, 11 U. S. C. A. 203). She alleged therein that she was primarily bona fide—personally engaged in producing products of the soil, the production of poultry and livestock and poultry products in their unmanufactured state and that the principal part of her income was derived from one or more of the foregoing operations, as follows: production of sugar cane and the processing of same into sugar and molasses, production of cattle, poultry and sale of eggs (R. 1).

She based her claim to be a "farmer" on (1) the fact that at her home in the City of Ponce, Puerto Rico, where she lives with her husband, she had been for the past year and a half (*i. e.*, from approximately April 22, 1937)[1] engaged in a small way in raising and selling poultry and eggs from which she derived a profit of about $50.00 per month (R. 21, 59); and (2) on the additional fact that she owned an interest in a large enterprise situated in the Island of Vieques devoted to the production of cane sugar and molasses from sugar cane grown by it and by independent formers (colonos) financed by the enterprise (R. 21-22, 59). Her interest consisted of a one-twelfth share in the contractual "Comunidad" José J. Benitez e Hijos

[1] The equity proceedings in which the foreclosure sale of the securities hypothecated by the Comunidad and corporation was decreed were begun October 20, 1936 (R. 53).

which had large holdings of land in Vieques, cattle, buildings and agricultural equipment and which owned and held the capital stock of the Benitez Sugar Company, a corporation.[2] The corporation owned the sugar factory, railroad, marine equipment, cattle, a small amount of land, etc. The corporation and "Comunidad" for many years had been conducted "as a single and integrated enterprise" (R. 21-22, 53-54).

Failing to obtain the requisite consent of creditors for composition, Petitioner filed her petition for adjudication under Section 75(s) of the Bankruptcy Act (R. 3).

Thereafter, upon motion of The Bank of Nova Scotia, here Respondent, the District Court dismissed the proceedings under Section 75 for lack of jurisdiction (R. 25). The District Court, among other things, held that Petitioner was not a "farmer" as defined in Section 75 of the Bankruptcy Act (R. 24-25).

Upon appeal the Circuit Court of Appeals for the First Circuit affirmed the decree of dismissal of the District Court (R. 66).

The Circuit Court held (1) that the new definition of the term "farmer" contained in Section 1(17) of the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. 1(17)) was applicable to proceedings under Section 75 of the Act; (2) that Petitioner did not qualify as a "farmer" under that definition (R. 60-65); but it expressly refrained from deciding whether Petitioner would have qualified as a "farmer" as that term was defined in Section 75(r) of the Act (11 U. S. C. A. 203(r)) (R. 68).

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[2] The "Comunidad" was a partnership within the meaning of the National Bankruptcy Act. *Benitez* v. *Bank of Nova Scotia*, 1 Cir., 1940, 110 F. (2d) 169, 172; *Benitez* v. *Bank of Nova Scotia*, 1 Cir., 1940, 116 F. (2d) 359, 361.

Question Presented

The sole question presented here is whether in a proceeding under Section 75 of the Bankruptcy Act the definition of the term "farmer" was to be determined by subsection (r) of Section 75 of the Act (11 U. S. C. A. 203(r)), or by Section 1(17) of the Act as amended by the Chandler Act (11 U. S. C. A. 1(17)).[3]

That question would seem to be purely one of statutory interpretation, and not one of application.[4] The entire process of interpretation in this case involves the selection of the proper statute.

Legislative History

Section 75 of the National Bankruptcy Act (47 Stat. 1467), as originally enacted March 3rd, 1933, consisted of Sub-sections (a) to (r).[5] Sub-section (s) was added in 1934.[6] Sub-section (r) contained the following definition of the term "farmer":

> "(r) For the purposes of this Section and Section 74, the term 'farmer' means any individual who

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[3] After consideration of Petitioner's "Petition for Instructions, etc.", filed here, the Clerk by letter of November 14, 1940, informed counsel as follows: "* * *. The Court has not entered a formal order in the matter, but has authorized me to advise you that the question upon which this case should be briefed and argued in this Court is whether in a proceeding under Section 75 of the Bankruptcy Act the definition of the term 'farmer' is to be determined by Section 75(r) of that Act or by Section 1(17) of the Chandler Act."

[4] A further reason for limiting the question to one of interpretation no doubt is the fact that the complete record below was not filed in this Court. See Clerk's certificate to original record filed here.

[5] It was one of several sections added to the 1898 Act, as amended, by a new Chapter VIII entitled "Provisions for the Relief of Debtors" (47 Stat. 1467).

[6] This was known as the Frazier-Lemke Act (48 Stat. 1298) which was held to be unconstitutional in *Louisville Joint Stock Land Bank* v. *Radford*, 1935, 295 U. S., 555, 79 L. Ed. 1593. A new subsection (s) enacted in 1935 was held to be constitutional in *Wright* v. *Vinton Branch, etc.* (1937), 300 U. S. 440, 81 L. Ed. 736.

is personally bona fide engaged primarily in farming operations or the principal part of whose income is derived from farming operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such farming operations occur."

And Sub-section (c) provided that a "farmer" could file a petition under the Section at any time up to March 4, 1938.

By Section 3 of an Act of May 15, 1935 (49 Stat. 246), the definition of the term "farmer" contained in Section 75(r) was amended to read as follows:

"(r) For the purposes of this section, section 4(b) and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

As stated in *First National Bank & Trust Company* v. *Beach* (1937), 301 U. S. 435, 438, 81 L. Ed. 1206, 1208:

"The only effect of the 1935 amendments of the statute, in so far as they have to do with the definition of a farmer, was to make it clear that farming operations include dairy farming and the production of poultry and livestock products in their unmanufactured state as well as the cultivation of the products of the soil. There had been decisions to the contrary. * * *"

This Amendatory Act of May 15, 1935 did significantly more, however, than provide an extended definition of the term "farmer" for the purposes of Section 75. It also made this extended definition applicable uniformly and consistently throughout the Bankruptcy Act. Thus Sec. 4(b) of the Act (30 Stat. 544) was amended by substituting the word "farmer" for the language "a person engaged chiefly in farming or the tillage of the soil"; and likewise in Section 74(l) of the Act the word "farmer" was substituted for the language "person engaged chiefly in farming or tillage of the soil." The amended section 75(r) expressly provided that for the purposes of this Section (75), Section 4(b) and Section 74, the term farmer was to be taken as therein defined. In no other sections of the Bankruptcy Act was the term "farmer" employed.

The achievement of this consistency and uniformity of definition throughout the Act was the avowed legislative purpose or intent. In House Report No. 455, 74th Congress, 1st Session, of the Committee on the Judiciary, with respect to this 1935 amendatory act, at page 2, it is said:

> "The purpose of this amendatory legislation is to clarify the intent of Congress to include stock raisers within the purview of the definition of a 'farmer' in section 75 and to achieve the same result with regard to other sections of the Bankruptcy Act in which reference is made to farmers; *i. e.*, section 4(b) excepting farmers from being adjudged involuntary bankrupts, and section 74(I) protecting farmers from involuntary proceedings under said section. It is desirable that the definition of the word 'farmer' be uniform in all sections of the Bankruptcy Act."[7]

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[7] This 1935 amendatory Act was originated by introduction of companion bills in both houses, S. 1616 and H. R. 5797, both in vastly different terms from the Act finally enacted. S. 1616 passed the Senate and was referred to the House. In the House S. 1616 was by unanimous consent adopted as a substitute for H. R. 5797 as

On March 4, 1938, Congress passed an Act extending till March 4, 1940, the time within which a petition might be filed under Section 75 of the Bankruptcy Act (52 Stat. 84, 11 U. S. C. A. 203(c)), the period of five years specified originally having expired.[8]

In so far as the definition of the term "farmer" was concerned, the Bankruptcy Act thus remained as amended by the Act of May 15, 1935 (49 Stat. 246), until the passage of the Chandler Act on June 22, 1938, effective September 22, 1938 (52 Stat. 840). Its history is significant.

Following the last substantial amendments made by Congress in 1926 to the Bankruptcy Act of 1898, there had been a constant demand for its revision. After the indictments in the Southern District of New York in 1929 in certain frauds in Bankruptcy proceedings, the demand for revision of the Act developed into strong agitation for change in the law which with the Donovan investigation and report became more widespread. This led to a nation-wide survey by the United States Department of Justice under the Presidential order of July 29, 1930. A comprehensive report of this survey was made December 5, 1931 which contained concrete recommendations. These were embodied in the Hastings-Michener bill introduced in the

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amended, S. 1616 was by unanimous consent amended by striking out everything after the enacting clause and substituting therefor the provisions of H. R. 5759 as amended by the Committee on the Judiciary (79 Cong. Rec. 7009-7010). The Senate concurred by unanimous consent (79 Cong. Rec. 9212-9213). As appears from House Report 455, 74th Congress, 1st Session, H. R. 5759, as amended by the Committee, is exactly as the act finally passed. Thus the intention to achieve uniformity of definition throughout the Bankruptcy Act was the unanimous intention of Congress.

[8] This Act amended subsections (b), (c) and (s) but made no reference to subsection (r) of section 75. In so far as here pertinent, subsection (c) as amended, reads as follows: "(c) At any time prior to March 4, 1940, a petition may be filed by any farmer * * *."

Seventy-second Congress designed to bring about a complete revision of the Bankruptcy Act. Extensive hearings before the Senate and House Committees on this bill were held. While there was much merit in the bill fundamental defects in it were thought to exist.

Out of these hearings on the Hastings-Michener bill the National Bankruptcy Conference came into being, a nation-wide organization of persons who had been connected with all phases of bankruptcy law and procedure.

After some five years of careful study, the National Bankruptcy Conference prepared for the House Committee on the Judiciary the sixth and final draft of a bill for revision of the Bankruptcy Act with an analysis thereof which had been presented in the 74th Congress by Mr. Chandler May 28, 1936, as H. R. 12889 (Committee Print, Analysis of H. R. 12889, 74th Congress, 2d Session.)

Copies of H. R. 12889 were widely distributed, and extensive hearings were had on it before the Senate and House Committees on the Judiciary. It was resolved that further changes were advisable.

With certain changes the above mentioned draft of H. R. 12889 was presented in the House as H. R. 8046, 75th Congress, 1st Session, on July 29, 1937 by Mr. Chandler. Extensive hearings on it were held before the House Committee on the Judiciary which reported it back to the House by Report No. 1409, entitled "Revision of the National Bankruptcy Act". The bill was passed by the House without any real debate August 10, 1937 (81 Cong. Rec. 8645-8649) and referred to the Senate Committee on the Judiciary. This Committee reported it back to the Senate with substantial amendments, and as so amended, the bill passed the Senate June 10, 1938 (83 Cong. Rec. 7602) without any real debate. The House concurred in the Senate amend-

ments without any real debate (83 Cong. Rec. 9101-9110). The bill was signed by the President June 22, 1938 and became effective September 22, 1938.[9] It is known as the Chandler Act.

The Chandler Act contained a new definition of the term "farmer" in Chapter 1, Section 1(17), (11 U. S. C. A. 1(17)), which reads as follows:

> "Section 1. Meaning of Words and Phrases. The words and phrases used in this Act (title) and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:
>
> "(17) 'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations."

This definition is an exact copy of Section 1(17) of the draft of H. R. 12889 prepared by the National Bankruptcy Conference, which with the note copied below is found at pages 4-5 of the Committee Print Analysis of H. R. 12889, *supra*:

> "(NOTE.—The Amendment of May 5, 1935, 11 U. S. C. A. Sec. 203 (August 1935 Supp.) extends the meaning of the term 'farmer' to include dairy farmers and persons engaged in the production of poultry or livestock or its products in their unmanufactured state, whose principal income is derived from any one or

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[9] For history and proceedings of the National Bankruptcy Conference and history of H. R. 12889 and H. R. 8046, see Committee Print, Analysis of H. R. 12889, 74th Congress, 2d Session, pp. 1-V and House Report No. 1409, 75th Congress, 1st Session, pp. 1-3.

more of these operations.[10] Correspondingly, Section 4 of the Act is amended by substituting the phrase 'a farmer' for the language a person engaged chiefly in farming or tillage of the soil. See 11 U. S. C. A. Sec. 22 (August 1935 Supp.). Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition for the term and to include it in Section 1 as clause (17). However, the Amendatory Act (*supra*) is too broad. While the above definition is essentially derived therefrom, it is restricted to a proper scope.—Weinstein)."

This same comment, except for the last two sentences thereof, is found in the Report of the House Committee on H. R. 8046. (House Report No. 1409, 75th Congress, 1st Session, p. 6.)

Section 4(b) of the Bankruptcy Act, as amended by the said Chandler Act, is likewise taken almost literally from the draft of H. R. 12889 prepared by the National Bankruptcy Conference.[11] We copy the following from the note found at page 20 of the said Committee Print Analysis of H. R. 12889, with reference to Section 4(b):

"NOTE.—The newly defined term 'farmer' is here employed, Sec. 1(17). * * *"

Essentially the same statement is found in the House Committee report on H. R. 8046 (House Report No. 1409, 75th Congress, 1st Session, p. 7), which reads as follows:

"(6) Who may become bankrupts—Section 4: In the

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[10] It is interesting to note that the National Bankruptcy Conference here interprets the definition of the term "farmer" as used in the Amendatory Act of May 15, 1935 in the same way as the acceptable interpretation made by the Courts. See *Shyvers* v. *Security First National Bank*, 9 Cir. 1939, 108 F. (2d) 611 (Cert. den. 309 U. S. 668, 84 L. Ed. 1015, Mar. 4, 1940).

[11] One difference here irrelevant is that the Chandler Act omitted the words "or territory" found in the draft of H. R. 12889.

revision of subdivision b, the newly defined term 'farmer' is employed, Section 1a(17). * * *"

In the draft of H. R. 12889 prepared by the National Bankruptcy Conference, Section 74 of the Bankruptcy Act was eliminated by transferring its provisions in amended form to Subsection I of Section 12 of H. R. 12889. (Committee Print Analysis of H. R. 12889, p. 234.) By virtue of this elimination and rearrangement, sub-section (l) of Section 74 of the Act appears as Sub-section I (10) of Section 12 of said draft of H. R. 12889 with the following note (Committee Print Analysis of H. R. 12889, p. 51):

> "(NOTE.—This is derived from Section 74(l) and (p). It may be noted in passing, however, that the latter subdivision, which prohibits an involuntary proceeding under Section 74 against a wage earner, is an anomaly; there is no provision in Section 74 for involuntary proceedings. The word 'farmer' is defined in Section 1.—Weinstein)."

In H. R. 8046, the arrangement is changed so that Section 74 is eliminated by transferring its provisions as amended to Chapters XI and XII, and in which this same provision prohibiting an adjudication of a "farmer" without his consent, is found as Sections 379 and 484. (House Report No. 1409, 75th Congress, 1st Session, pp. 125 and 135.) And this prohibition is now found as such sections in the Bankruptcy Act as amended by the Chandler Act (11 U. S. C. A. 779 and 884).

None of the Sections of H. R. 8046 which we mentioned above (*i. e.*, Sections 1(17), 4(b) and 379 and 484) were affected by any of the amendments to the bill made in the Senate. (Senate Report No. 1916, 75th Congress, 3rd Session and 83 Cong. Rec. 8694.) With reference to the new

definition of "farmer" we extract the following from Senate Report No. 1916, 75th Congress, 3d Session, page 11 thereof:

> "Section 1—meaning of words and phrases—This section deals with definitions. Several of the definitions of terms used in the present Act are loosely drafted and others are not sufficiently comprehensive or inclusive. Other terms, which recur frequently in the Act, are not defined. The bill restores the alphabetical order which had originally been set up in the Act, clarifies, corrects and strengthens the existing definitions, and adds new definitions for the terms 'bona fide purchaser', 'date of adjudication', 'farmer', the phrase 'to record', and 'relatives'."

It is of further significance to notice the declared purposes or intention of the drafters of the Sections to which we have here referred. We quote the following from pages IV and V of the Committee Print Analysis of H. R. 12889:

> "Summarized, the bill seeks to accomplish the following general purposes:
>
> "1. To provide an improved composition procedure, including features of the so-called 'relief provisions' for individual and agricultural compositions and extensions and a carefully prepared plan for corporate reorganizations, thus retaining the desirable permanent provisions of the new legislation and making possible the elimination of cumbersome, overlapping and inconsistent provisions; also to make provision for wage-earner amortizations. * * *
>
> "12. To clarify certain of the definitions and to add desirable new definitions."

Under the heading "Purposes of the Bill" (House Report No. 1409, 75th Congress, 1st Session, p. 3), we find a declaration of the general purposes of H. R. 8046 in essen-

tially the same language as that of the National Bankruptcy Conference quoted above. And in the Senate Report of the Committee on the Judiciary as to H. R. 8046 (Senate Report No. 1916, 75th Congress, 3d Session, p. 3) essentially the same declaration of purposes is made. Purpose No. 1 in these latter-mentioned reports of the House and Senate is stated in part as follows:

> "1. To clarify certain of the definitions and to add desirable new definitions; * * *."

In the draft of H. R. 12889 prepared by the National Bankruptcy Conference, Section 75 of the Bankruptcy Act is not set out either fully or in part, although practically all other sections of the Act are set out with deleted language stricken through and new language proposed as amendments in italics. (Committee of H. R. 12889, note at foot of title page.) And at page 234 of said Committee Print Analysis of H. R. 12889, the following appears:

> "Sec. 75.—Agricultural Compositions and Extensions.
>
> "(Inasmuch as this section is but temporary and expires by its own limitation, the Conference makes no recommendation with reference to it. In the event of its elimination debtors now entitled to its benefits would find relief under Sub-section I of Section 12.—King * * *.)"[12]

And in House Report No. 1409 on H. R. 8046, 75th Congress, 1st Session, at pages 56 to 144, Part III thereof,

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[12] H. R. 6452 and S. 2215, companion bills, were introduced by Mr. Lemke April 15, 1937 and by Mr. Frazier April 20, 1937, respectively, to make Section 75 of the Act permanent by eliminating from subsection (c) thereof the words "within five years after this section takes effect". S. 2215 was passed by the Senate July 22, 1937 (81 Cong. Rec. 9591). The House Committee on the Judiciary decided, after extensive hearings on H. R. 6452 and S. 2215 as passed by the Senate that Section 75 should not be made permanent in its effect.

pursuant to paragraph 2(a) of Rule XIII of the Rules of the House of Representatives the Act is set out with existing law proposed to be omitted enclosed in brackets, with new matter printed in italics and with existing law in which no change is proposed in roman type. Section 75 is not set out in the said House Report but at page 144 thereof we find the following:

> "Section 75.—Agricultural Compositions and Extensions. (No change)."

No text of the Act is set out in Senate Report No. 1916 on H. R. 8046, 75th Congress, 3rd Session, but at page 10 thereof we find the following:

> "Section 2 of Bill[13]
>
> "40. Section 2 of the bill, page 296, amends the Frazier-Lemke Act (sec. 75 of the Bankruptcy Act) to allow the Courts to grant to farmers who have been granted a stay of proceedings under section 75(s) of such Act, a further stay to November 1, 1939."

And at page 18 of said Senate Report, we find the following:

> "Chapter VIII. Provisions for the Relief of Debtors.
>
> "This Chapter includes sections 74, 75 and 77. Section 74 is combined with section 12 to constitute the proposed new Chapter XI on arrangements. Section 75 relates to agricultural compositions and extensions. These expire by limitation and are, therefore, not covered by the bill. No amendments are proposed to section 77 regarding railroad reorganizations."

Nor was any part of the text of Section 75 of the Bankruptcy Act included in H. R. 8046 as engrossed and signed

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[13] It will be remembered that Section 2(a) and (b) of H. R. 8046 was inserted as an amendment to the bill in the Senate and concurred in by the House (83 Cong. Rec. 8694).

and as it was printed in the official publication of the Chandler Act. (Public No. 696, 52 Stat. 840, 75th Cong., 3rd Sess., Ch. 575.)

The 1938 edition of the Judicial Code (11 U. S. C. 203(r), 11 U. S. C. A. 203(r)) includes Section 75(r) of the Bankruptcy Act exactly as it existed prior to the Chandler Act, *i. e.*, as amended in the Amendatory Act of May 15, 1935 (49 Stat. 246) which we have copied hereinabove.

On March 4, 1940, after the decision below,[14] Congress passed "An Act to extend until March 4, 1944, the time during which petitions may be filed by farmers under Section 75 of the Bankruptcy Act" (54 Stat. 40, 11 U. S. C. A. 203(c) and (r). Section 1 of this Act amended subsection (c) of Section 75 of the Bankruptcy Act by inserting the words "March 4, 1944" in substitution of the words "March 4, 1940". Section 2 of this Act of March 4, 1940 reads as follows:

> "Sec. 2. Section 75(r) of such Act (*i. e.*, The Bankruptcy Act of 1898 as amended) is amended to read as follows:
>
> "(r) For the purposes of this section and section 4(b) the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal

[14] *Benites* v. *Bank of Nova Scotia*, 1 Cir. 109 F. (2d) 743 was decided January 10, 1940, rehearing was denied February 21, 1940. The Chandler Act became effective September 22, 1938. The debtor's (here petitioner) petition was filed in the District Court October 13, 1938.

representative of a deceased farmer; and a farmer shall be deemed a resident of any county in which such operations occur."

This is copied literally from Section 75(r) of the Bankruptcy Act as amended by the Act of May 15, 1935 (49 Stat. 246) already set out hereinabove except for the omission of the words "and Section 74". With reference to Section 2 of this Act of March 4, 1940, we extract the following from the House Report of the Committee on the Judiciary (House Report No. 1658, 76th Cong., 3d Sess., p. 4):

> "Section (2) is a clarifying amendment, Section 74 of the Bankruptcy Act was eliminated by the Chandler Act of 1938, and its provisions are now included in Chapter XI of that Act. Reference to section 74 is confusing, and the committee recommends that such reference be stricken out of the law."

Nothing more relating to this amendment is to be found in said report nor in the record of the hearings before the House Committee on the Judiciary on the bills, H. R. 7528 and S. 1935.[15]

Nor do we find anything with reference thereto in the report of the Committee on the Judiciary of the Senate.[16]

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[15] Hearings before the Special Subcommittee on Bankruptcy, etc., of the Committee on the Judiciary of the House, etc., 76th Cong. 3d Sess., on H. R. 7528 and S. 1935, etc., Serial 14, U. S. Gov. Printing Office.

[16] Senate Report No. 1045, 76th Cong. 1st Sess. on S. 1935, introduced by Mr. Frazier March 27, 1939, as reported by the Committee on the Judiciary with amendments August 1, 1939 provided for a complete revision of Section 75 of the Bankruptcy Act, and in the form in which it passed the Senate, subsection (j) thereof included the definition of the term "farmer" in the exact words of former subsection (r) as amended May 15, 1935 except that the term "farmer debtor" was substituted for the term "farmer". (House Report No. 1658, 76th Cong. 3d Sess. p. 12.) H. R. 7528, the companion bill to S. 1935, was introduced by Mr. Lemke August 5, 1939. After hearings on the two, the House Committee reported

The above legislative history, we believe, contains the relevant legislative material which will, no doubt, assist the Court in the determination of the legislative intent.

Argument

Section 1(17) of the Bankruptcy Act, as amended by the Chandler Act, repeals Section 75(r) of the Bankruptcy Act, as amended by the Act of May 15, 1935, insofar as Section 1(17) and Section 75(r) are inconsistent.

The language of Section 1(17) of the Chandler Act is plain, and unless inconsistent with the context of Section 75, the definition in Section 1(17) of the term "farmer" is applicable to proceedings under Section 75 just as it is to Section 4(b) or Sections 379 and 484 of the Chandler Act. There is certainly nothing in the context of subsections (a) to (q) and (s) of Section 75 which is inconsistent with Section 1(17) of the Chandler Act.

Subsection (r), after the Chandler Act, in so far as repugnant to Section 1(17) must be taken as repealed by the Chandler Act because subsection (r) is inconsistent with the provisions of the Chandler Act. Section 4 of the Chandler Act specifically provides that "all Acts or parts of Acts inconsistent with any provisions of this Amendatory Act are hereby repealed." (*Gibson* v. *United States* (1904), 194 U. S. 182, 48 L. Ed. 926; *United States* v. *Yuginovich* (1921), 256 U. S. 450, 65 L. Ed. 1043; *United States* v. *California* (1936), 297 U. S. 175, 80 L. Ed. 567.)

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on S. 1935 and recommended that everything after the enactment clause be stricken and there be substituted therefor the provisions in the Act of March 4, 1940 as passed, and also that the title be changed to read as passed. (House Report No. 1658, 76th Cong. 3d Sess. p. 1.)

If not repealed subsection (r) of Section 75 would render Section 1(17) of the Chandler Act utterly meaningless, and completely inapplicable to Section 4(b) as well as sections 379 and 484. Subsection (r) provides that the definition of "farmer" therein contained is applicable to section 4(b) and Section 74. Sections 379 and 484 are repetitions of Section 74(l) transferred to the new section numbers. And Sections 379 and 484 are nothing more or less than the application of the provision of 4(b) against the involuntary adjudication of a farmer to proceedings for arrangements under Chapters XI and XII (formerly Section 74). The term "farmer" is not employed in any other Sections of the Act, except Section 1(17). Thus if Section 75(r) stood after the Chandler Act, Section 1(17) would be meaningless since it would be wholly inapplicable to any part of the Bankruptcy Act. Certainly neither Congress nor the National Bankruptcy Conference would have used the language of Section 1(17) unless some meaning was sought thereby to be conveyed.

The result of such an interpretation would not only be absurd, but it would defeat the avowed legislative intent, for it was unanimously and expressly declared in the Committee Reports that Section 1(17) of the Chandler Act defined the term "farmer" as used in Section 4(b) and Sections 379 and 484. And so also was it declared by the National Bankruptcy Conference.

Thus if the repugnant part of Section 75(r) be still retained as a part of the context of Section 75, it must be retained as a part of the context of Section 4(b) and Sections 379 and 484 (formerly Section 74(1)). And if the context of Section 75 thus be treated as inconsistent with Section 1(17), so must the context of Sections 4(b), 379 and 484 be inconsistent with Section 1(17).

It has been suggested that Section 75(r), after the Chandler Act, should be read just as if the words "section 74" and "section 4(b)" did not appear therein; that the intention of Congress was to have one definition of the term "farmer" for the purposes of Section 75, and another and different definition of the term for the purposes of Sections 4(b), 379 and 484.[17] Not only would such a situation be awkward and absurd; it would also defeat a clearly defined intent of Congress to have a consistent and uniform definition of the term "farmer" throughout the Bankruptcy Act. Congress took great pains to achieve that result by the Amendatory Act of May 15, 1935, and there is nothing to indicate that that intent and policy was to be changed. Even in the Amendatory Act of March 4, 1940, when subsection (r) was reenacted the reference to Section 4(b) was retained. And while the reference to Section 74 was deleted, the reenacted subsection (r) must be interpreted to apply also to Sections 379 and 484 as well as 4(b). Thus this policy of uniformity and consistency of definition is reaffirmed by Congress.

It should be furthermore pointed out that not only would a duple meaning of the term "farmer" be awkward and contrary to the policy of uniformity and consistency; it would also render practically meaningless the definition of Section 1(17) as applied to the term "farmer" as used in Sections 4(b), 379 and 484. If we suppose involuntary bankruptcy proceedings against a person who would qualify as a farmer under Section 75(r) but not under Section 4(b), or Sections 379 or 484, the policy of Section 4(b) would be defeated by that person by filing a petition under

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[17] Oregon Law Review, Vol. XVIII, No. 2 Exemption of Farmers from Involuntary Proceedings under the Chandler Act, pp. 109-114, February 1939.

Section 75 or under Chapter XI or Chapter XII or if the prior initiation of proceedings under Section 4(b) prevented voluntary proceedings under Section 75 or Chapters XI or XII, we would have the amazing case of a person sought to be protected under Section 75 frustrated by the provisions of Section 4(b) and the defeat of the Policy of Section 75.

The suggestion that Section 75(r), after the Chandler Act, be read as if the reference to Sections 74 and 4(b) had been eliminated, would lead to absurdity and would defeat the avowed legislative intent.

This awkward and absurd situation of a duple meaning of the term "farmer" in the Bankruptcy Act is not avoided by interpreting the words "shall include" found in Section 75(r) as amended May 15, 1935, as words of enlargement used in contrast to the words "shall mean" found in Section 1(17) of the Chandler Act. (See *American Surety Company of New York* v. *Marotta* (1933), 287 U. S. 513, 517, 77 L. Ed. 466, 468.) If Section 75(r) be considered as unaffected by Section 1(17), then Section 75(r) furnishes the definition of the term "farmer" for the entire Bankruptcy Act. Thus the question of whether Section 75(r) is more extensive than Section 1(17) is sterile.

The note of the National Bankruptcy Conference following the definition contained in Section 1(17) of the Chandler Act (Committee Print Analysis of H. R. 12889, p. 5) shows clearly that it was the intention of the drafters of this new definition to replace thereby the definition contained in Section 75(r) which was thought to be too broad. While the National Bankruptcy Conference was a non-legislative body, their comments on and analysis of the draft prepared by them showing their intention and purpose, it would seem, should be relevant material to be here considered by the Court (*Securities & Exchange Com'n* v.

Robert Collier & Co., 2 Cir. (1935), 76 F. (2d) 939, 941; *Coke v. Illinois Central R. R.* (1919), D. C. Tenn., 255 Fed. 190). And this draft presented by the Conference was the sixth culminating more than five years of study, deliberation and debate.[18]

Moreover the draft of Section 1(17) presented by the National Bankruptcy Conference was adopted without change in H. R. 8046 and was enacted by Congress in the Chandler Act.

This repeal of that part of Section 75(r) repugnant to Section 1(17) of the Chandler Act does not involve a change of the essential provisions of Section 75, but merely the change in the legislative definition of one of the terms employed in Section 75. Prior to the Chandler Act the definition of the term "farmer" for the entire Bankruptcy Act was found in Section 75(r). That was contrary to the arrangement of the Act, and somewhat anomalous, since as originally designed, the definitions of terms used in the Act were to be found in Section 1 of the Act. By the Chandler Act the logical arrangement was restored and the definition of the term "farmer" was put in Section 1(17) in substitution of Section 75(r). This could hardly be regarded as, nor referred to, as a change in Section 75 itself, although obviously the new definition affected the extent of the class of persons who might qualify as "farmers" under Section 75.

We think the comments of the House Committee on the Judiciary in its report that no change had been made in Section 75 are not to be taken to mean that the new defini-

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[18] "* * *. Successive drafts of the same act do not simply succeed each other as isolated phenomena, but the substitution of one for another necessarily involves an element of choice often leaving little doubt as to the reasons governing such choice. * * *" A note on "Statutory Interpretation" Landis, 43 Harv. L. R. 886, 889.

tion of "farmer" in Section 1(17) of the Chandler Act was not to replace that contained in Section 75(r). So too, the statement by the Senate Committee on the Judiciary that the Chandler Act did not cover Section 75. Neither could be taken as literally true since by the Senate amendments, concurred in by the House, Section 75 was expressly amended by Section 2 of the Chandler Act. Many other of the terms employed in Section 75 are now defined in Section 1 of the Chandler Act.

The interpretation adopted by the Circuit Court below carries out the purpose and intent of Congress to (1) provide a consistent and uniform definition of the term "farmer" throughout the Bankruptcy Act; (2) to retain only those parts of the Bankruptcy Act which were not inconsistent with the provisions of the Chandler Act; and (3) to provide and place in its logical place a new and better definition of the term "farmer", one "restricted to a proper scope". Does that interpretation defeat the broad and more general purpose of Congress embodied in Section 75 of the Act? To answer this question it is necessary to consider (1) the purpose or policy of Congress sought to be carried out by Section 75, and (2) the difference in the scope of the definition of the term "farmer" in Section 75(r) and that in Section 1(17) of the Chandler Act.

The broad purpose of Section 75 was to make available to distressed farmers the opportunity of financial rehabilitation. More specifically the statute was designed to enable a farmer to reach an agreement for composition or extension with the majority in number and amount of his creditors and upon failure of this, to obtain a moratorium for three years during which time he might remain in possession of his farm by payment of a reasonable rental, protected by the exclusive jurisdiction of the Bankruptcy

Court from foreclosure and other judicial proceedings, at the end of which three-year moratorium he might free himself from the burden of his debts by paying the appraised value of his farm. See *John Hancock Mut. L. Ins. Co.* v. *Bartels*, 1939, 308 U. S. 180, 84 L. Ed. 176; *Kalb* v. *Feuerstein*, 1940, 308 U. S. 433, 84 L. Ed. 370; *Wright* v. *Vinton Branch, etc.*, 1937, 300 U. S. 440, 81 L. Ed. 736. The purpose is that of conservation rather than a liquidation by forced sale.

When Section 75 was first enacted in 1933 a considerable body of law on the question as to who was a farmer under the Bankruptcy Act already existed. It had long been the policy of Congress, as embodied in Section 4(b) of the Act to exempt the farmer from involuntary bankruptcy proceedings. Section 4(b) provided that a natural person "engaged chiefly in farming or the tillage of the soil" was exempt from involuntary proceedings. Some Courts, prior to 1933, held the terms "farming" and "tillage" were synonymous (*Hart-Parr Co.* v. *Barkley*, 8 Cir. 1916, 231 Fed. 913; *Matter of Brown*, D. C. Mo. 1922, 284 Fed. 899; *Matter of Stubbs*, D. C. Wyo. 1922, 281 Fed. 568) while others concluded that the terms were not coextensive. (*Robertson* v. *Dwyer*, 7 Cir. 1911, 184 Fed. 880; *In re Thompson*, D. C. Ia., 1900, 102 Fed. 287.)

To determine whether the debtor was chiefly engaged in farming or tillage of the soil, all of his activities and pursuits had to be considered. (*Am. Agricultural Chemical Co.* v. *Brinkley*, 4 Cir. 1912, 194 Fed. 411; *In re Disney*, D. C. Md. 1915, 219 Fed. 294; *In re Brown*, 9 Cir. 1918, 253 Fed. 357; *In re Macklem*, D. C. Md. 1927, 22 F. (2d) 426; *Harris* v. *Tapp*, D. C. Ga. 1916, 235 Fed. 918.) If it were found that the debtor was only secondarily engaged in some other occupation, and "chiefly" or primarily engaged in

farming or tillage of the soil he was exempt. Certain tests or criteria were developed by the Courts that were to be applied to a given case to determine the debtor's chief occupation or business. Such business or occupation would be that one of principal concern to him, on which he chiefly relied for a livelihood or means of acquiring wealth, and which was of some permanency in its nature. The amount of time or physical exertion devoted to a certain business or occupation (*In re Mackey*, D. C. Del. 1901, 110 Fed. 355), the amount of income, the fact that the greater part of his indebtedness was created in a certain business, and whether there had been an actual abandonment of another business or occupation, were factors to be considered. But it was impossible and impracticable to precisely define the facts which in all cases would determine the question, and each case had to be decided on its own peculiar facts and circumstances. (*In re Tyler*, N. D. Ia. 1932, 284 Fed. 152; *In re Mackey, supra; In re Glick*, 7 Cir. 1928, 26 F. (2d) 938.)

Mere ownership of a farm was not sufficient to exempt a debtor from involuntary proceedings (*In re Johnson*, D. C. N. Y. 1907, 149 Fed. 864; *In re Matson*, D. C. Pa. 1903, 123 Fed. 743), even though the farm be leased on shares. The debtor was held exempt, however, where incidentally a private banker (*Couts* v. *Townsend*, D. C. Ky. 1903, 126 Fed. 249; *In re Beiseker* v. *Martin*, D. C. Mont. 1921, 277 Fed. 1010), a storekeeper (*Rise* v. *Bordner*, D. C. Pa. 1905, 140 Fed. 566), or lawyer (*In re Hoy*, D. C. Ia. 1905, 137 Fed. 175), where he was principally engaged in farming. A retired farmer, since he no longer was chiefly engaged in farming, was not exempt. (*In re Matson, supra.*)

After the enactment of Section 75 in 1933, we find in Section 75(r), as amended in 1935, the words "primarily

bona fide personally" engaged in farming. The words "primarily-personally" would seem to have the same meaning as "chiefly" in former section 4(b) of the Act. (*In re Day*, D. C. Ill., 1935, 10 F. Supp. 229.) The term "bona fide" seems to be the statement of the existing requirement of the Courts that a debtor not have entered into agriculture merely to evade an involuntary adjudication. Some Courts allowed immunity on the theory that the change of occupation was made in good faith (*In re Folkstad*, D. C. Mont., 1912, 199 Fed. 363; *In re Inman*, D. C. Wyo., 1932, 57 F. (2d) 595), while other Courts somewhat arbitrarily held that the occupation at the time of acquisition of the debts was controlling. (*First Nat. Bank of Bode* v. *Williams*, 8 Cir., 1929, 31 F. (2d) 749; *Smith* v. *Brownsville State Bank*, 8 Cir., 1926, 15 F. (2d) 792; *Harris* v. *Tapp*, D. C. Ga., 1916, 235 Fed. 918.)

The phrase "the principal part of whose income is derived from farming operations" appears at first glance to be a provision that would include persons primarily engaged in another occupation, or none at all, such as retired farmers, absentee landlords who rent farm land, or indeed mortgage creditors whose chief income is interest paid by a farmer, none of which persons would have been classified as farmers under the Bankruptcy Act prior, at least, to 1933. The Courts, however, have not so interpreted that phrase. In the case of *In re Day*, D. C. Ill., 1935, 10 F. Supp. 229, it was held that there is little or no distinction between the phrases "engaged chiefly in farming", "personally engaged primarily in farming", and "the principal part of whose income is derived" from farming operations. Still another Court has interpreted the phrase to mean that the debtor must be engaged "primarily" in farming operations, and that the phrase "the principal part of whose income", etc., was inserted as a precaution against

bad years when forced to earn a livelihood from some other occupation. (*In re Hilliker*, D. C. Cal., 1935, 9 F. Supp. 948; *Sherwood* v. *Kitcher*, 2 Cir. 1936, 86 F. (2d) 750, 751.) And in *Shyvers* v. *Security First Nat. Bank*, 9 Cir. 1939, 108 F. (2d) 611 (cert. den. March 4, 1940, 60 S. Ct. 608), the Court interpreted the phrases to mean that a debtor had to be personally engaged in farming operations, the purpose of the phrase "or the principal part of whose income", etc., being to prevent outside additional personal operations or pursuits from defeating a debtor's status as a "farmer", provided his principal income continued to come from his personal farming operations. So also the case of *In re Olsen*, D. C. Ia., 1937, 21 F. Supp. 504, holds that the principal part of the debtor's income must be derived "from bona fide personal engagements in producing products of the soil."

Thus the Courts have not found that the intent of Congress was to give the second part of the definition in Section 75(r) the broad and literal effect which its language imports. Now, just as prior to 1933, the debtor must be engaged personally and primarily in farming operations.

It is equally clear, however, that there are two branches to the definition in Section 75(r). As was said by this Court in the case of *First Nat. Bank & Trust Co.* v. *Beach*, 1937, 301 U. S. 435, 438, 81 L. Ed. 1206, 1208:

> "We do not try to fix the meaning of either of the two branches of this definition, considered in the abstract. The two are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of some one who personally or primarily was engaged in different activities. A catalogue of such occasions might err for excess or defect, if made up in advance. * * *"

Without questioning this Court's pronouncement above quoted, it is submitted that in order to carry out the purpose of Section 75; *i. e.*, the financial rehabilitation of distressed farmers as such (*In re Noble*, D. C. N. J., 1937, 19 F. Supp. 504), the requirements, found by some Courts in their interpretation of Section 75(r), that the debtor be personally and primarily engaged in farming operations, would be more within the spirit of the statute. (See the note, pp. 4-5 of the Committee Print Analysis of H. R. 12889.) "* * *. While the above definition is essentially derived therefrom it is restricted to a proper scope."

And now we may see in what respects the definition in Section 1(17) of the Chandler Act differs from that of Section 75(r). As will be seen, the former both extends and restricts the scope of the latter, at least in so far as its literal content be considered.

Comparing the two definitions, it will be observed that the new definition omits the terms "primarily" and "*bona fide*". Instead it provides merely that "farmer" shall mean an individual "personally" engaged in farming or tillage of the soil, etc. Literally, therefore, this new definition requires the debtor to be personally engaged in farming or tillage, but it does not require that such farming operations be the "primary" or "chief" occupation or business of the debtor. The omission of the term "BONA FIDE" would seem to be of no consequence in view of the decision that a change to the exempt class must have been made in good faith. (*First Nat. Bank of Bode* v. *Williams*, 8 Cir., 1929, 31 F. (2d) 749, 750.) But, in view of the policy and intent of Congress, it would seem that in spite of the omission of the term "primarily" the words "personally engaged" would be interpreted to mean personally and primarily engaged. In the case of a debtor personally engaged in dairy, poultry or livestock operations there is

no difficulty because of the qualifying "if" clause which requires that the principal part of the debtor's income be derived from such operations.

It would therefore seem that the only real difference between the old and the new definition lies in the use of the disjunctive "or" in the old as against the conditional "if" in the new. Under the old definition, taken literally, a person would seem to qualify as a farmer if the principal part of his income was derived from farming operations even though such person be neither primarily or personally engaged in farming. (As pointed out above the Courts have not interpreted the definition literally.) Under the new definition, however, a person personally engaged in dairy, poultry or livestock operations will qualify provided the principal part of his income is derived from such operations. The "if" clause, it seems, supplies the factor or test to determine whether the operations comprise the debtor's chief occupation or business. That requirement would seem to be clearly within the policy and spirit of Section 75 of the Act. If the policy of Section 75 is to provide means for the financial rehabilitation of distressed farmers, the application of its provisions to a person who was neither personally nor primarily engaged in farming operations although the principal part of his income be derived from such operations (carried on by a farmer) would seem to be neither contemplated by the Section nor necessary to carry out its policy.

Contrary to the view often expressed, there seems to be nothing novel in the fundamental principle of Section 75. Since as early as 1882 it has been recognized that under the bankruptcy power, conservation of the debtor's assets and not the sale thereof should be the chief purpose to be achieved in the national interest (*Warren, Bankruptcy in United States History*, pp. 152-159). And there would

seem to be no valid constitutional objection to the application of the principle of Section 75 to all debtors. Be that as it may, Congress in its wisdom, has seen fit to afford such remedy only to "farmers". And the determination of who is a "farmer" may be more effectually made under the definition contained in Section 1(17) of the Chandler Act than Section 75(r). Section 1(17) of the Chandler Act is certainly more in consonance with the general notion of who is a "farmer" than Section 75(r). We do not ordinarily speak of a person as a "farmer" unless he be personally and primarily engaged in farming operations.

It is suggested that the enactment of Section 75(r) (with the omission of reference to Section 74) in the Act of March 4, 1940 (54 Stat. 40) extending the effects of Section 75 to March 4, 1944, shows that Congress did not intend that Section 1(17) of the Chandler Act was ever to apply to Section 75. It would, however, be more reasonable to infer the contrary. If Congress had never intended to repeal Section 75(r) by Section 1(17) of the Chandler Act, it would not have again enacted Section 75(r). It is conceivable that following the decision of the Circuit Court below, Congress, realizing that Section 75(r) had been repealed, enacted it again in order to repeal Section 1(17) of the Chandler Act. For since, as thus reenacted, Section 75(r) still makes reference to Section 4(b), and Sections 379 and 484 being for the same purpose as Section 4(b), there is no section of the Bankruptcy Act to which Section 1(17) may apply after the 1940 Act.

Recalling the legislative history of the Act of March 4, 1940, the reenactment of Section 75(r) may well have been due to inadvertence. There was no discussion of the matter before any of the Committees nor on the floor of the House or the Senate. Nor did the National Bankruptcy Conference in any way intervene in the matter.

The promulgation of General Order No. 50(9) effective February 13, 1903 (305 U. S. App., p. 30) is not necessarily inconsistent with the interpretation of the statute made by the Circuit Court below, since the reference to Section 75(r) would be to that subsection "as amended".

Form in Bankruptcy No. 63, accompanying the General Orders in Bankruptcy, is clearly inconsistent with the interpretation of the statute by the Circuit Court below.

Both the General Order No. 50(9) and Form No. 63 were carried over without change from General Order L(9) promulgated April 17, 1933 (288 U. S. 643) and from the earlier Form No. 65 (288 U. S. 646). As suggested by the Circuit Court below, this may have been inadvertent (*Meek* v. *Centre County Banking Co.* (1924), 268 U. S. 426, 69 L. Ed. 1028).

The inclusion of Section 75(r) in the 1938 edition of the Judicial Code (11 U. S. C. 203(r)) as if unaffected by Section 1(17) of the Chandler Act is not conclusive. That Code is only presumptive evidence of the laws (1 U. S. C. 54(a)).

Petitioner's Brief

We are impelled to consider here that portion of Petitioner's brief entitled "Preliminary Considerations", pages 11-18 of the typewritten draft.

In our brief in opposition to the petition for certiorari filed in this case, page 6 thereof, we stated that the parties did not raise in the Circuit Court of Appeals below the question as to whether Section 1(17) of the Chandler Act had repealed Section 75(r) of the Bankruptcy Act in so far as the two were inconsistent.

Counsel for Petitioner in his brief, pages 11 to 13, now says that we did raise that question in the Circuit Court.

In support of that view he quotes excerpts from respondent's (appellee's) brief filed in the Circuit Court. That brief does not form a part of the record before this Court. We are mailing printed copies to the Clerk of this Court so that the full context may be available if the Court desires to examine it. For convenience we print in the appendix of our present brief the full context of Part III of respondent's (appellee's) brief below from which the excerpts quoted by counsel for petitioner are extracted, together with that division of that brief entitled "Assignments of Errors and Questions Involved".

An examination of said brief, or the parts thereof printed in the appendix, will show clearly that our former statement to the Court is correct.

Nor did the United States District Court for Puerto Rico consider the matter of the repeal of Section 75(r) by Section 1(17) of the Chandler Act. The Opinion, Findings of Fact and Conclusions of Law and Decree of the District Court (R. 17-25) clearly show that. See also paragraph IV of the Motion to Dismiss (R. 8). The extraction of isolated excerpts from the colloquy between the District Court and counsel during the hearing, is not a fair way of showing what the District Court thought, considered or held. Yet this is the method employed in petitioner's brief, pages 14-18 thereof. Nor did we know that the transcript of the testimony formed a part of the record here. We have not seen the copy thereof filed here by petitioner.

Any lawyer or any Court would undoubtedly be very happy to receive the credit for the thorough and scholarly opinion of the Circuit Court of Appeals below. In this case, however, neither we nor the District Court can justly claim that credit.

We also think it desirable to make reference to the "Conclusions" contained in Petitioner's brief, pages 81-

84 thereof. [illegible] we understand the language there used petitioner contends (1) that the Circuit Court of Appeals below erred in holding that the definition of the term "farmer" applicable to proceedings under Section 75 was contained in Section 1(17) of the Chandler Act and (2) that the applicable definition, on the contrary, was contained in Section 75(r) of the Bankruptcy Act. Assuming that this Court agrees with those contentions, petitioner then contends further that (3) this cause should be remanded to the United States District Court for Puerto Rico with instructions to reinstate her proceedings under Section 75 of the Act and (4) declare null and void the foreclosure sales of properties of the Comunidad José J. Benitez e Hijos and the corporation Benitez Sugar Company made under decrees of said District Court as a Court of Equity.

We are constrained to ask petitioner when and by what Court is it to be decided whether petitioner qualifies as a "farmer", assuming, as contended by petitioner, that Section 75(r) did contain the applicable definition of "farmer". The Circuit Court below expressly refrained from deciding that question (R. 68). As we understand the decision of the said District Court, its decision was to the effect that petitioner did not qualify as a "farmer" under Section 75(r), although petitioner thinks that it merely decided, as did the Circuit Court, that petitioner did not qualify as a "farmer" under Section 1(17) of the Chandler Act.

If this Court should hold as erroneous the interpretation of the statute by the Circuit Court of Appeals below, we presume that it is not the intention of this Court to decide whether petitioner was a farmer as defined under Section 75(r). We so presume, because (1) we understand the issue here is limited to the single question as to what

was the applicable definition of the term "farmer" and (2) because the entire record of the case in the Circuit Court of Appeals has not been brought here.

If, therefore, this Court concludes that the Circuit Court erred in its interpretation of the statute, it would seem that this case be disposed of by remanding it to the Circuit Court of Appeals with instructions. Exactly such a disposition of the case was made by this Court in the case of *American Surety Co.* v. *Marotta*, 1933, 287 U. S. 513, 518, 77 L. Ed., 466, 469. There this Court said:

> "As the Circuit Court of Appeals, upon construction of Sections 1(9) and 3a(1) which we hold erroneous, disposed of the case without deciding other questions there raised, the decree will be reversed and the case will be remanded to that Court for further consideration, and proceedings in harmony with this opinion."

If this Court should decide that the interpretation of the statute by the Circuit Court of Appeals was erroneous, and should resolve to determine whether petitioner qualified as a "farmer" under Section 75(r), it undoubtedly would afford the parties an opportunity to be heard on that question, and would order the complete record in the Circuit Court of Appeals to be sent here.

Finally, we do not understand, as petitioner contends, that the reenactment of Section 75(r) by the Amendatory Act of 1940 extending the effective terms of Section 75 to March 4, 1944, means that the applicable definition of the term "farmer" for the purposes of petitioner's proceedings under Section 75 is contained in Section 75(r). The Act of 1940 is not retrospective, and if the interpretation of the Circuit Court of Appeals was correct at the time it was made, the subsequent statute abrogating Section 1(17) of the Chandler Act and again enacting Section 75(r)

would not, it seems, have the effect of reinstating petitioner's proceedings even though she qualified as a farmer as defined in Section 75(r). Ordinarily statutes establish rules for the future and they will not be applied retrospectively unless that purpose plainly appears. (*Brewster* v. *Gage*, 1930, 280 U. S. 327, 74 L. Ed. 457.)

In Conclusion

In the final analysis, the single problem here presented is whether at the time petitioner filed her petition for composition or extension under Section 75 of the Bankruptcy Act in the District Court, the applicable definition of the term "farmer" was to be found in former subsection (r) of Section 75 of the Bankruptcy Act, or in Section 1(17) of the Act as amended by the Chandler Act.

The Circuit Court of Appeals below held that it was Section 1(17) which provided the definition of the term. And it is submitted that its conclusion was correct.

The judgment of the Circuit Court of Appeals should be affirmed.

Respectfully submitted,

WALTER L. NEWSOM, JR.,
Attorney for Respondent.

J. HENRI BROWN,
Of Counsel.

April, 1941.

Appendix

The following is taken from respondent's (appellee's) brief filed in this case in the Circuit Court of Appeals below. Printed copies of the brief have been sent to the Clerk of this Court.

From pages 15-16 of said brief:

"Assignment of Errors and Questions Involved"

Appellant has seventy-five specific assignments of error, the great bulk of which, in our opinion, are frivolous and present questions not reviewable on this appeal.

The main questions in the case are whether the District Court committed manifest error in holding that appellant was not a farmer as defined in Section 75(r) of the Bankruptcy Act; that appellant's position was not filed nor prosecuted in good faith; that she presented no feasible plan for extension and composition; that the properties and affairs of the Community José J. Benitez e Hijos (and the corporation Benitez Sugar Company) could not be properly administered in bankruptcy under appellant's petition, and that appellant's poultry business was solvent.

Appellee takes the position that the District Court committed no manifest error in its holdings.

From pages 32-38 of said brief:

POINT III

Appellant is not a farmer as defined in Section 75 of the Bankruptcy Act.

A. *"Farmer" as defined in Section 75 of the Act:*

Sub-section (r) of Section 75 of the Act (11 U. S. C. A. 103(r)) defines a "farmer" as that term is used

in said section. In so far as here relevant, it reads as follows:

> (1) "For the purposes of this section, Section 4(b) and Section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, (2) or the principal part of whose income is derived from any one or more of the foregoing operations."

This sub-section (r) was enacted in 1935, by the Amendatory Act which we have discussed in Point II(b) hereinabove. (Act of August 28, 1935, c. 792, 14 Stat. 943.) Since that time Congress has passed the Amendatory Act of June 22, 1938 known as the Chandler Act (52 Stat. 840), effective by its terms September 22, 1938.

The said Chandler Act added a new sub-section (17) to Section 1 of the Act (11 U. S. C. A. 1 (17)), which provides that, unless inconsistent with the context, the term:

> "'Farmer' shall mean (1) an individual personally engaged in farming or tillage of the soil and (2) shall include an individual personally engaged in doing farming or in the production of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations."

As pointed out by the Supreme Court the definition of a "farmer" in Section 75(r) has two different branches. In the case of *First National Bank & Trust Co.* v. *Beach*, 301 U. S. 435, 438-439, 81 L. Ed. 1206, 1208, that Court said:

"* * * The two (branches) are not equivalents. They were used by way of contrast. Occasions must have been in view when the receipt of income derived from farming operations would make a farmer out of someone who personally or primarily was engaged in different activities. * * *"

and in the case of *In re Horner*, 104 F. (2d) 600, 602 (May, 1939) the Court, after discussion of the *Beach* case, *supra*, pointed out that under the language of the Act the test of whether petitioner was a farmer must be for the purposes of that case as follows:

"* * * Was the petitioner either primarily bona fide personally engaged in producing products of the soil or was the principal part of his income derived from his activities in producing products of the soil?

Referring to the second branch of the definition the Court in the case of *In re Davis*, 22 F. Supp. 2, 13, aptly observed:

"* * * What were the foregoing operations? In each instance a personal operation."

We submit that the test to determine who is a "farmer" under the Act may be stated as follows:

1.—Is the debtor primarily bona fide personally engaged in the farming operations?

or

2.—Is the debtor personally engaged in any farming operations from which he derives the principal part of his income?

As to the meaning of the word "primarily" as used in the first branch of the definition we cannot add to the language used by Judge LINDLEY (District Court, E. D. Illinois) in the case of *In re Day*, 10 F. Supp. 229, 231, which we quote:

"* * * 'Primarily means basically or in such a manner as to be of first importance.' * * *"

And with respect to the "principal part" of one's income as used in the second branch of the definition, we are told, in the same case:

"* * * Principal means main, chief, of first importance."

The term "income" as used in the second branch of the definition obviously means "net income" as pointed out in the following language taken from the decision in *Sherwood* v. *Kitcher* (Second Circuit), 86 F. 750, 751:

"* * * In this aspect of the case he asks us to count the gross return from his farm and not the net. That would falsify the statute; the seed, the manure, the tools, the draught animals, the wagons, the planters and reapers; all these and more must be paid for out of the gross return, before any 'income' results. * * *"

As said in the *Beach* case, *supra*, however, in order to determine whether one is a "farmer" as defined in Section 75(r):

"* * * In every case the totality of the facts is to be considered and appraised. * * *"

Do the facts show appellant to be a "farmer" under either branch of this statutory definition?

B. *Appellant's Poultry Business.*

It is submitted that appellant is not "primarily engaged" in the poultry business. The operations in that respect which she carries on in her home in the city of Ponce are not a matter of basic and prime importance to her. She started it because she liked it, no doubt as a hobby, just as a housewife might take up gardening

or some other activity. "She likes and enjoys it", and thinks "she is pretty good at it"; got books, from the States, follows what the rules say and what she ought to do. She is not a businesswoman; she had a finishing school education. She keeps no accounts but only notes and knows at the end of each month what she got. She never thought of her income therefrom as "annual income".

Her poultry business is carried on on a very small scale. Her schedules showed 47 hens, 6 roosters and 176 pigeons, but by the time of the hearing on the motion to dismiss, she had increased this number to 110 chickens and about 200 pigeons, although the record shows no amendment of her schedules. That was an increase in stock of over 100%.

The record fails to show that she devoted any substantial part of her time or energies to her poultry.

Obviously, she does not derive the principal part of her income from her poultry. "She gets about $50 or $60 monthly all together as profits", she says. But her husband gives her over $200 per month to cover house service and everything; "she gets whatever she wants from him and whenever she needs money she gets it from him."

As said in *Swift* vs. *Mobley*, 28 F. (2d) 610, "The raising of chickens about his home place was on too small a scale to constitute an occupation or means of living, * * *."

In her proposal for extension appellant makes no mention of her poultry business except that she states that expected conditional payments under the Sugar Act of 1937 will permit "further development of her poultry business on a much larger scale, * * *." And in stating what her estimated net income will be in succeeding years she refers only to the properties in Vieques; not one word is said about estimated future net income from her poultry business.

Certainly Congress in enacting the far-reaching provisions of Section 75 of the Act designed to save

farmers from losing their homes and means of livelihood and to lighten their burdens from billions of dollars of farm mortgage debts, did not have in mind such a case as appellant and her poultry business.

She has no debts with respect to or growing out of her poultry except an account of sixteen odd dollars. And she pays cash for everything. Although her schedules show no cash on hand she thereafter acquired the additional chickens and pigeons already mentioned.

As the District Court found, the poultry business is solvent and produces profits. It appears that she is quite able to meet her debts as they mature.

C. *Appellant's Farming Operations in Vieques.*

These refer to the sugar enterprise of Benitez Sugar Company and the Community José J. Benitez e Hijos and have no relation nor connection whatever with appellant's poultry business.

Appellant never participated in the agricultural operations of the Community nor the management thereof; she has never spent anything personally to cover said operations or taxes on the properties. Her intervention has been limited entirely to receiving any profits which corresponded to her. She apparently knows nothing of the affairs and operations; she did not know positively that from 1933 to 1936 appellee bank was in possession of and operating the properties of both the Community and the corporation.

Appellant exercises no control over planting or employment of labor (See *In re McCoy*, 17 F. Supp. 972). She never resided on the properties in Vieques (See *In re Davis*, 22 F. Supp. 12; *In re Olsen*, 21 F. Supp. 504). It does not appear that she devoted any of her time or energies to the sugar enterprise.

Where a landowner merely leases his farm that does not make him a farmer (*Rudy* vs. *Federal Land Bank of Baltimore*, 91 F. (2d) 549; *Beamesderfer* vs. *First National Bank and Trust Co.*, 91 F. (2d) 491;

In re Davis, supra, In re Day, supra, nor does the mere fact of ownership of farm land make one a farmer. *Baxter* vs. *Savings Bank of Utica,* 92 F. (2d) 404; *In re Noble,* 19 F. Supp. 504; *In re McCoy, supra*).

Here it was the Community as such which was engaged in farming (and in manufacturing too) if anyone was so engaged, not appellant. Revenues received by appellant were not devoted to paying any Community expenses, nor did appellant ever furnish any funds for the business and affairs of the Community. She was interested only in the receipt of profits. As said in *In re Olsen,* 21 F. Supp. 504, 508, appellant's intervention was at most "a milking process".

Nor indeed had appellant ever been a farmer. She was a housewife, running her home in the City of Ponce; she was in no sense trained or experienced as a farmer (See *Morrison* vs. *Federal Land Bank of Louisville,* 105 F. (2d) 279, 281).

Did the receipt of any income from the sugar enterprise in Vieques make appellant a farmer? Any revenue which she may have received certainly did not arise out of her personal activities or operations as a farmer. And this is the crucial test under the authorities as heretofore shown.

But she never received any income from farming operations. The $3,000 which she received in 1933 was for signing papers for the extension of the Community contract. The record before this Court does not show who paid her the $3,000. (We pointed out hereinabove that there was evidence before the District Court other than that which has been brought before this Court on appeal.) While this revenue may have been the result of appellant having been an owner of one-twelfth undivided interest in the Community properties, it certainly did not derive from any farming operations of appellant, nor of the Community, nor does it appear to have been paid by the Community.

Nor was the amount of $17,500 ($20,000 as the appellant says) of the benefit payments for 1934-35 in any

sense net income from appellant's farming operations. The benefit payments were not even net income of the Community. If the whole amount thereof ($101,443.20) had been received by the Community as such, its farming operations for 1934-35 would have still showed a loss. And as a matter of fact it appears that appellee Bank did credit the advances made by it to finance the 1934-35 crop with the entire amount of the benefit payments, although it allowed the members of the Community to retain for themselves $45,000 thereof. And that $45,000 was distributed among them according to their own agreement, not according to the amount of their shares in the Community. If the whole amount of the $45,000 had been distributed according to their shares (see Section 327 of the local Civil Code) appellant would have received one-twelfth thereof, that is, $3,750. The District Court found that appellant had received $17,500 (or $20,000) by virtue of an agreement, not from farming operations (Rec. p. 234).

It may be pointed out also that the properties during the crop year 1934-35 were operated by appellee, and it was the appellee who necessarily made the contract for restriction of production in consideration of which the bounty or benefit payments were made. (See the *Agricultural Adjustment Act* of May 12, 1933, as amended April 7, 1934, especially Title I, Sections 1 and 8, 48 Stat. 1, 48 Stat. 34, and 48 Stat. 528.)

And obviously some part of the total of the bounty was payable to the corporation. The amount of this gross return to the corporation could not, as against corporate creditors, have been treated as net income by the stockholders. Nor could the part thereof corresponding to the Community have been treated as net income by the members thereof as against Community creditors (*The Bank of Nova Scotia* vs. *Carle Dubois, supra*). And in applying the second branch of the definition of "farmer" by Section 75(r) of the Act, the term "income" as therein used means "net income"

not "gross returns". (See *Sherwood* vs. *Kitcher*, 86 Fed. 750, 751 cited *supra*.)

While it is true that appellant would undoubtedly not have received the payments of $3,000 in 1933 and $17,500 ($20,000) in 1937, had she not been the owner of a one-twelfth undivided interest in the properties of the Community, such amounts represented neither income (net) from her own personal farming operations, nor from farming operations of the Community (nor of the corporation).

Appellant says that the Secretary of Agriculture decided the $17,500 which she received belonged to her because of her farming operations, but it is submitted the record shows the contrary.

It is submitted that the appellant in no way qualifies as a "farmer" under the Act. The District Court's findings so show, and they are not to be overturned unless there is manifest error. (*Island Improvement Co.* vs. *Holman*, 99 Fed. (2d) 63.)

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SUPREME COURT OF THE UNITED STATES.

No. 90.—October Term, 1940.

Carlota Benitez Sampayo, Petitioner, vs. The Bank of Nova Scotia, Respondent. } On Writ of Certiorari to the United States Circuit Court of Appeals for the First Circuit.

[May 12, 1941.]

Mr. Justice Murphy delivered the opinion of the Court.

To arrange a composition or an extension as a farmer-debtor, petitioner filed a petition in October, 1938, under § 75 of the Bankruptcy Act (47 Stat. 1467, 1470; as amended 48 Stat. 925; *Id.*, 1289; 49 Stat. 246; *Id.*, 942). Failing to secure the assents required by § 75(g), petitioner amended her petition in November, 1938, to proceed under § 75(s). Respondent then moved to dismiss the petition on the ground that petitioner was not a "farmer" and therefore was not entitled to the relief afforded by § 75(s). After a hearing, the District Court sustained the motion.

The Circuit Court of Appeals affirmed. It held that the formula for determining whether petitioner was a farmer was to be found in § 1(17) of the Chandler Act of 1938 (52 Stat. 840, 841), and that petitioner could not be regarded as a farmer within its terms. 109 F. (2d) 743, on rehearing, 109 F. (2d) 750. Because the decision was substantially inconsistent with Order 50(9) of the General Orders in Bankruptcy (305 U. S. 677, 710), we granted certiorari.[1] 311 U. S. —.

The ultimate question, of course, is whether petitioner may proceed under § 75(s) as a farmer-debtor, but for present purposes the problem is to select the definition of "farmer" which is applicable to persons petitioning for relief under § 75.

[1] Insofar as material here, Order 50(9) reads: " . . . The petition shall show to the satisfaction of the district court that the decedent at the time of his death was a farmer within the meaning of subdivision (r) of section 75. . . . "

The Bankruptcy Act contains two definitions of the term "farmer". Section 1(17) of the Chandler revision provides: "'Farmer' shall mean an individual personally engaged in farming or tillage of the soil, and shall include an individual personally engaged in dairy farming or in the productions of poultry, livestock, or poultry or livestock products in their unmanufactured state, if the principal part of his income is derived from any one or more of such operations."

Section 75(r), as amended in 1935 (49 Stat. 946) provides: "For the purposes of this section, section 4(b), and section 74, the term 'farmer' includes not only an individual who is primarily bona fide personally engaged in producing products of the soil, but also any individual who is primarily bona fide personally engaged in dairy farming, the production of poultry or livestock, or the production of poultry products or livestock products in their unmanufactured state, or the principal part of whose income is derived from any one or more of the foregoing operations, and includes the personal representative of a deceased farmer. . . ."

Starting with the premise that only one of the definitions can stand, respondent contends that § 1(17) is an implicit repeal of § 75(r). To support the contention, respondent points to the obsolete reference in § 75(r) to § 74, and to a statement in a committee report which is said to indicate that Congress intended the definition in § 1(17) to measure the applicability of § 4(b) to persons who claim to be farmers.[2]

The argument ignores the plain import of § 75(r). The meaning of the phrase "for the purposes of this section" is hardly open to question. Obviously, it is neither impossible nor necessarily inconsistent to prescribe one definition for a particular section or sections and another for the balance of the Act. Nor is the applicability of § 75(r) to proceedings under § 75 seriously placed in doubt because the former section refers to a section which no longer exists under that number and to a section which now may be governed by §1(17). The only question here is whether § 75(r) or § 1(17) is applicable to § 75.

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[2] The latter argument, upon which we express no opinion, is grounded on the statement in H. Rep. No. 1409, 75th Cong., 1st Sess., p. 6, which runs: "The amendment of May 5 (*sic*), 1935 . . . extends the meaning of the term 'farmer'. . . . Correspondingly, section 4 of the act is amended by

Section 75, with immaterial differences, first appeared in the distressed-debtor legislation of 1933. 47 Stat. 1467, 1470-1473. Designed for a particular purpose, the relief of hard-pressed farmers, it was regarded as a special and temporary enactment. See § 75(c); compare S. Rep. No. 1215, 73d Cong., 2d Sess., p. 3; H. Rep. No. 1898, 73d Cong., 2d Sess., p. 2. In 1938 its time limit was extended to 1940. 52 Stat. 84, 85. At that time a special committee held extensive hearings on a proposal to make § 75 a permanent part of the Bankruptcy Act, and finally concluded that the section should be continued only as temporary legislation. Hearings before Special Subcommittee on Bankruptcy of the Committee on the Judiciary, 75th Congress, 2d and 3d Sessions; see also H. Rep. No. 1833, 75th Cong., 3d Sess., p. 2; S. Rep. No. 899, 75th Cong., 1st Sess.; H. Rep. No. 1658, 76th Cong., 3d Sess., p. 2. Naturally enough, legislation drafted for such a purpose carried its own test for determining the persons to whom it should apply.

When the proposed revision of 1938 was before a Senate Committee, Representative Chandler, the proponent of the bill, stated: "We did not touch [§ 75] and it is not affected by this Act." Discussing the alterations in existing statutes worked by the new act, the House Report laconically observed that there was "no change" in § 75. H. Rep. No. 1409, 75th Cong., 1st Sess., p. 144. Somewhat less briefly, the Senate Report stated: "Section 75 relates to agricultural compositions and extensions. These expire by limitation and are, therefore, not covered by the bill." S. Rep. No. 1916, 75th Cong., 3d Sess., p. 18.

The Chandler Act, a careful and comprehensive revision of bankruptcy legislation, was the product of several years of thoughtful study. See 81 Cong. Rec. 8646-8649. One of its avowed purposes was to clarify or remove inconsistent and overlapping provisions. See H. Rep. No. 1409, 75th Cong., 1st Sess., pp. 1-3. As a part of this comprehensive revision, numerous definitions were overhauled or inserted for the first time. Among the latter was § 1(17). See H. Rep. No. 1409, *supra*, p. 6. But § 75(r) also was

substituting the phrase 'a farmer' for the language 'a person engaged chiefly in farming or the tillage of the soil'. Pursuant to this purpose of Congress to expand the meaning of the term, it would seem advisable to formulate a new definition and to include it in section 1 as clause (17)."

left in the Act, and, as already indicated, its existence was not unknown to the revisors. Its very presence in the statute after the revision is persuasive evidence that § 1(17) was not intended to govern proceedings under § 75.

We conclude that petitioner's activities must be tested by the definition in § 75(r) rather than by the one in § 1(17). The judgment is reversed and the cause is remanded to the Circuit Court of Appeals for consideration of other questions in light of our decision.

It is so ordered.

Mr. Justice STONE did not participate in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.